

NO. 46734-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

SPENCER GRANT,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Garold E. Johnson, The Honorable Frank E. Cuthbertson,
The Honorable Thomas J. Felnagle, Judges

REPLY BRIEF OF APPELLANT

JARED B. STEED
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u>	1
DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO OBJECT WHEN THE CCO VOLUNTEERED THAT GRANT WAS CLASSIFIED AS A 'HIGHLY VIOLENT OFFENDER'	1
B. <u>CONCLUSION</u>	4

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Filitaula

184 Wn. App. 819, 339 P.3d 221 (2014).....1

State v. Lane

125 Wn.2d 825, 889 P.2d 929 (1995).....1

State v. Perrett

86 Wn. App. 312, 936 P.2d 426

rev. denied, 133 Wn.2d 1019 (1997) 3

FEDERAL CASES

Young v. Washington

747 F. Supp.2d 1213 (W.D. Wa. 2010) 3

A. ARGUMENT IN REPLY¹

DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO OBJECT WHEN THE CCO VOLUNTEERED THAT GRANT WAS CLASSIFIED AS A ‘HIGHLY VIOLENT OFFENDER.’

Appellant Spencer Grant argues his trial attorney was ineffective for failing to object to community corrections officer, (CCO) Jonathan Casos’ testimony that Grant was classified as a “highly violent offender.” Amended Brief of Appellant (ABOA) at 37-42. Grant maintains there was no valid tactical reason to fail to object to such evidence and that the introduction of this evidence was prejudicial. Id.

The State first argues that Casos’ characterization of Grant as “highly violent offender” was “inextricably” tied to the res gestae of why Grant’s living situation was checked so frequently. Brief of Respondent (BOR) at 20, 23. Evidence is properly admitted under the ER 404(b) res gestae exception if it is necessary to depict a complete picture for the jury. State v. Filitaula, 184 Wn. App. 819, 825, 339 P.3d 221 (2014) (citing State v. Lane, 125 Wn.2d 825, 832, 889 P.2d 929 (1995)).

Here, Grant’s classification as a “highly violent offender” was not necessary to depict a complete picture for the jury. Casos’ could have

¹ The State’s arguments regarding appellant’s request to represent himself, and use of paper peremptory challenges have been anticipated and sufficiently addressed in the Amended Brief of Appellant and need not be challenged further on reply.

testified that based on Grant's classification he was required to do two home checks a month, without mentioning that Grant was a "highly violent offender." The "highly violent offender" classification added nothing to the probative value of this evidence. The State nevertheless suggests that "without the background information explaining the need for regular checks, the jury may have been more likely to question Casas' professed vigilance." BOR at 20. The State cites no authority for this proposition.

As discussed in Grant's opening brief, defense counsel's failure to object to admission of Grant's "highly violent offender" classification impermissibly shifted "the jury's attention to the defendant's general propensity for criminality, the forbidden inference." ABOA at 39 (citing State v. Perrett, 86 Wn. App. 312, 320, 936 P.2d 426, rev. denied, 133 Wn.2d 1019 (1997)).

The State nonetheless contends the characterization of Grant as a "highly violent offender" was not prejudicial to Grant's case. The State argues, "too many, a registered sex offender on DOC supervision is synonymous to a 'highly violent offender' as both are commonly believed to be people who should be monitored." BOR at 23. Again, the State fails to cite any authority for this proposition.

Finally, without citing authority, the State maintains that defense counsel's "overall performance" was effective. BOR at 23. This argument is without merit. Defense counsel may provide effective representation in many ways while still falling short in other instances. See e.g. Young v. Washington, 747 F. Supp.2d 1213, 1219-20 (W.D. Wa. 2010) (rejecting argument that general professionalism of defense counsel was a defense against allegations of specific deficiency). Such is the case here. Grant's constitutional right to effective assistance counsel was violated. It is reasonably likely the jury would have reached a different result absent evidence that Grant was of a violent character. This Court should reverse his convictions.

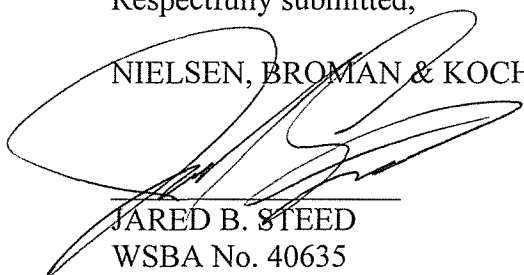
B. CONCLUSION

For the reasons discussed above and in the opening brief, this court should reverse Grant's convictions and remand for a new trial.

DATED this 20th day of October, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



JARED B. STEED

WSBA No. 40635

Office ID No. 91051

Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON/DSHS

Respondent,

v.

SPENCER GRANT,

Appellant.

COA NO. 46734-8-II

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20TH DAY OF OCTOBER, 2015 I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] SPENCER GRANT
NO. 775260
MONROE CORRECTIONS CENTER
P.O. BOX 777
MONROE, WA 98272

SIGNED IN SEATTLE WASHINGTON, THIS 20TH DAY OF OCTOBER, 2015.

x *Patrick Mayovsky*

NIELSEN, BROMAN & KOCH, PLLC

October 20, 2015 - 4:02 PM

Transmittal Letter

Document Uploaded: 1-467348-Reply Brief.pdf

Case Name: Spencer Grant

Court of Appeals Case Number: 46734-8

Is this a Personal Restraint Petition? Yes ☐ No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

☒ Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Patrick P Mayavsky - Email: mayovskyp@nwattorney.net

A copy of this document has been emailed to the following addresses:

PCpatcecf@co.pierce.wa.us